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January 18, 2006

VIA ELECTRONIC FILING

The Honorable Joseph J. Farnan, Jr.
USDC for the District of Delaware
844 King Street
Wilmington, DE 19801

Re: *Affymetrix, Inc. v. Illumina, Inc.*, D. Del., C.A. No. 04-901-JJF

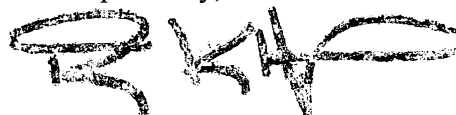
Your Honor:

We have Affymetrix's letter to the Court dated January 17, 2006 enclosing 40 entries from Illumina's supplemental privilege log for the Court's review. We were surprised to see this letter, since as the Court instructed last week, we were in the process of revising that log. In fact, attached you will find our letter to Affymetrix's counsel, dated January 16th, indicating we would serve the revised log on Affymetrix by January 18th. Consequently, Affymetrix is placing 40 entries from the prior log before the Court. Your Honor will also see from our January 16th letter, Illumina has taken Your Honor's comments very seriously, regarding our effort to revise the log and justify Illumina's position.

In light of the above, Illumina requests Your Honor disregard the log entries forwarded by Affymetrix on January 17, and that Your Honor direct Affymetrix to resubmit 40 entries from the revised log. We will submit to the Court tomorrow our revised supplemental privilege log and comments on the 40 entries Affymetrix submitted to the Court on the January 17th, in the event the Court wishes to consider those entries.

Illumina stands ready to submit any of the documents from its revised log to the Court for in camera review.

Respectfully,



Richard K. Herrmann, I.D. No. 405
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cc: Dr. Peter T. Dalleo, Clerk of the Court (via electronic filing)
MaryEllen Noreika, Esq. (via electronic filing)
Michael J. Malecek, Esq. (via email)

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January 16, 2006

VIA EMAIL

Michael J. Malecek
Chief Advocacy Counsel
Affymetrix, Inc.
6550 Vallejo Street, Suite 100
Emeryville, CA 94608

Re: *Affymetrix, Inc. v. Illumina, Inc.*
Civil Action No. 04-901 JJF

Dear Mike:

I write in response to Dan Reed's letter of December 20, 2005, regarding Illumina's redactions and privilege log.

Further to the discussion at the January 12th hearing, we have reviewed the documents that Mr. Reed identified in his December 20, 2005 letter to Marc Sernel (hereinafter "December 20 Letter"). I have provided below Illumina's positions regarding each document. We are also revising Illumina's Supplemental Privilege Log to reflect these positions and in a further attempt to anticipate entries you might ask us to clarify, despite the fact that Affymetrix has not identified any specific issues as to that log. We are working as diligently as possible to complete this revision, and will provide that as soon as possible, in any event, by the end of the day on Wednesday, January 18.

Our responses on a document by document basis to the issues Affymetrix raised in Mr. Reed's December 20 Letter are as follows.

Redacted Documents Identified By Affymetrix As Not Appearing On
Illumina's Privilege Log

As an initial matter, the following bates numbered documents were repeated twice in Affymetrix' listing of documents that did not appear on Illumina's Privilege Log: IAFP00586692; IAFP00599460; IAFP00599468; IAFP00599476; and IAFP00616024. Therefore, Illumina addresses Affymetrix' concerns with respect to the 89 documents (rather than the 94 documents) identified in its December 20 Letter.

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Second, the following documents were neither contained on Illumina's Privilege Log or Supplemental Privilege Log nor could Illumina identify any redactions contained therein: IAFP00496279¹; IAFP00586015; IAFP00021008; and IAFP00020396.

Third, on January 11, 2006, Illumina produced a Supplemental Privilege Log addressing 68 of the 89 documents identified by Affymetrix. Further, in 13 instances, the documents Affymetrix identified were simply duplicates of documents already identified on the log.² However, for clarity, Illumina states its position on each document Affymetrix has identified in its December 20 Letter:

1. Documents as to which Illumina maintains its redactions and for which Illumina will provide on its Revised Supplemental Privilege Log:

IAFP00517024;	IAFP00535712;	IAFP00547156;	IAFP00549028;
IAFP00570136;	IAFP00585331;	IAFP00585514;	IAFP00585824;
IAFP00586030;	IAFP00586254;	IAFP00587839;	IAFP00597806;
IAFP00614408;	IAFP00615999.		

2. Documents contained on Illumina's Privilege Log or Supplemental Privilege Log and as to which Illumina maintains its redactions:

IAFP00482171 (#25);	IAFP00503734 (#39);	IAFP00546406 (#1255);
IAFP00546441 (#1281);	IAFP00549030 (#947);	IAFP00550220 (#1241);
IAFP00550012 (#201);	IAFP00563823 (#1144);	IAFP00567162 (#56);
IAFP00567164 (#59);	IAFP00567264 (#61);	IAFP00570111 (#1239);
IAFP00585771 (#1064);	IAFP00585900 (#954);	IAFP00585954 (#1221);
IAFP00585935 (#1216);	IAFP00586037 (#1185);	IAFP00586162 (#977);
IAFP00586692 (#987);	IAFP00587841 (#993);	IAFP00590342 (#1098);
IAFP00590639 (#1028);	IAFP00591095 (#1030);	IAFP00595180 (#1179);
IAFP00603076 (#1206);	IAFP00603093 (#1207);	IAFP00605009 (#942);
IAFP00608005 (#832);	IAFP00605491 (#943);	IAFP00608034 (#924);
IAFP00608036 (#925);	IAFP00611631 (#1025);	IAFP00611688 (#1149);

¹ The "X"'s contained in the "From" line of the 3/17/05 email (IAFP 00496279) were not redacted and instead created, presumably, by the author of the email.

² IAFP00517024; IAFP00535712; IAFP00547156; IAFP00549028; IAFP00570136; IAFP00585331; IAFP00585514; IAFP00586030; IAFP00586254; IAFP00587839; IAFP00614408; IAFP00615999; IAFP00585824.

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IAFP00613882 (#534); IAFP00616001 (#745); IAFP00616024 (#1393);
IAFP00616939 (#827); IAFP00626328 (#30);

IAFP00597807 (redacted as non-responsive); IAFP00547162 (Dup. of #1122).

3. **Illumina is withdrawing some of its prior redactions in the following documents but maintaining others. Illumina will address these in its Revised Supplemental Privilege Log:**

IAFP00570451 (#1249); IAFP00582690; IAFP00590053 (#1297);
IAFP00605011 (#1056); IAFP00608221 (#1238); IAFP00612610 (#1273);
IAFP00612768 (#1252).

4. **Illumina is willing to withdraw its redactions from the following documents and will provide unredacted copies promptly:**

IAFP00587097 (#992);	IAFP00608028 (#923);	IAFP00607962 (#920);
IAFP00607932 (#831);	IAFP00606084 (#946);	IAFP00481686 (#20);
IAFP00570140 (#1121);	IAFP00612701 (#1244);	IAFP00612652 (#1288);
IAFP00612526 (#1307);	IAFP00607756 (#1163);	IAFP00608026 (#922);
IAFP00607967 (#921);	IAFP00612406 (#1285);	IAFP00603660 (#1055);
IAFP00603030 (#1181);	IAFP00603045 (#1215);	IAFP00603036 (#1214);
IAFP00599460 (#1203);	IAFP00599450 (#1202);	IAFP00599468 (#1204);
IAFP00599476 (#1205);	IAFP00482241 (#27);	IAFP00570830 (#836).

Documents Identified As Inappropriately Designated and/or Redacted

We have reviewed the 21 documents identified in Affymetrix' December 20 letter as allegedly public documents inappropriately designated and/or redacted. We are continuing to investigate the redaction in IAFP00630885. As to the remaining documents identified, we will be producing unredacted copies shortly. We are continuing to investigate whether the confidentiality designation can be withdrawn from these documents. Given the Federal Holiday today, we are unable to complete these items today. We will, however, provide to you our position regarding these documents by Wednesday, January 18.

Explanation of Privilege Regarding Certain Documents On Illumina's Privilege Log

Finally, Affymetrix has raised questions regarding a few log entries from Illumina's Privilege Log. In particular, Affymetrix questioned entries that lack an attorney as an author or an intended recipient. As is apparent from the documents logged by Affymetrix in its privilege log, you are aware that a document need not be authored or addressed to an attorney in order to

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be withheld on attorney-client privilege grounds. Documents may, for example, be transmitted via non-attorneys in order to relay information requested or advice by counsel. However, Illumina provides the following explanations regarding Affymetrix' concerns:

- Log #11: The email reflects the transmission of legal advice by N. Espinosa regarding Affymetrix' complaint in this litigation.
- Log #12: The email reflects legal advice obtained from counsel (N. Espinosa) regarding Affymetrix' complaint in this litigation.
- Log #13: Duplicate of Log #12.
- Log #38: This document relates to a draft letter regarding the present litigation with requests for legal advice and comments of counsel (N. Espinosa).
- Log #114: This document reflects legal advice regarding intellectual property strategy.
- Log #116: Illumina will produce this document with redactions on January 18, 2006 and Illumina's Privilege Log will be revised accordingly. The redactions reflect legal advice (N. Espinosa) regarding intellectual property issues.
- Log #118: Duplicate of Log #116.
- Log #152: The email is authored by an Illumina employee assisting counsel (N. Espinosa) and seeking information for counsel so that counsel can provide legal assistance.
- Log #256: The email is authored by an Illumina employee assisting counsel (N. Espinosa) and seeking information regarding patent protection to provide to counsel so that counsel can provide legal assistance. This email also contains information reflecting legal advice from N. Espinosa.
- Log #277: This email thread is authored by Illumina employees and contains and reflects legal advice (N. Espinosa) regarding patent and patent licensing issues.
- Log #286: We will produce this document.
- Log #292: This email thread reflects legal advice (from N. Espinosa) provided to Illumina employees regarding certain technology coverage under a confidentiality agreement.
- Log #354: Duplicate of Log #11.

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- Log # 431: This document is authored by an Illumina employee working with counsel for the purpose of providing legal advice regarding patentability and patent prosecution.

Illumina has also corrected Log Entry #39, which contains redacted bates numbered document IAFP00503734. This correction will be made in Illumina's Revised Supplemental Log.

As mentioned above, Illumina will provide to you as soon as possible, and no later than the end of the day January 18, a Revised Supplemental Log in an attempt to respond to all of the questions Affymetrix has brought to the attention of Illumina. Your attempt to impose a Monday deadline for this effort, which of course is a Federal Holiday, simply has no basis, although we have responded to all of the questions on which Affymetrix has purported to meet and confer.

Please do not hesitate to contact me should you have any questions.

Very truly yours,

A handwritten signature in cursive script, reading "Serena J. Gondek".

Serena J. Gondek

cc: Daniel R. Reed